Nos. 84-325 and 84-356

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

METROPOLITAN LIFE INSURANCE COMPANY,
Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,
Appellee.

THE TRAVELERS INSURANCE COMPANY,
Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,
Appellee.

On Appeal From The Supreme Judicial Court For The Commonwealth Of Massachusetts

BRIEF *AMICUS CURIAE* OF THE ERISA INDUSTRY COMMITTEE IN SUPPORT OF APPELLANTS' JURISDICTIONAL STATEMENTS

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BRIEF *AMICUS CURIAE* OF THE ERISA INDUSTRY COMMITTEE IN SUPPORT OF APPELLANTS' JURISDICTIONAL STATEMENTS

This case presents a question of fundamental importance to the Nation's employers and their employees—whether state legislatures are free, in the guise of "insurance regulation," to dictate the benefits that must be provided by insured employee benefit plans. The decision below holds that a Massachusetts statute requiring specific mental health benefits to be included

in all health insurance policies covering state residents—a statute whose express purpose and principal effect were to govern employee benefit plans—is not pre-empted by the Employee Retirement Income Security Act of 1974 ("ERISA") or the National Labor Relations Act ("NLRA"). This result threatens to force employers either to assume the great burden and expense of conforming their insured employee benefit plans to ever-changing laws of fifty different states, or to abandon insured employee benefit plans altogether.

The ERISA Industry Committee submits this *amicus curiae* brief, with the consent of the parties, to urge the Court to note jurisdiction of these two appeals and give plenary consideration to this important state-court decision.

THE INTEREST OF *AMICUS* AND THE GREAT PUBLIC SIGNIFICANCE OF THE ISSUES INVOLVED

The ERISA Industry Committee ("ERIC") is a nonprofit association of over one hundred major corporations doing business in a wide variety of American industries. A list of ERIC's members is set forth in the Appendix hereto. Through ERIC, member companies express their views to the courts, the Congress, and the Executive Branch on issues affecting private pension and welfare plans.

ERIC represents a broad cross-section of firms maintaining health benefit plans and other employee welfare plans. ("Welfare plans" are employee benefit plans that provide non-pension benefits, such as health, accident, or supplemental unemployment benefits.) ERIC members' welfare plans cover tens of millions of beneficiaries. All of the members of ERIC do business in more than one state, and a number have employees in all fifty states. Transfers of employees from one state to another are common. Many of the welfare plans of ERIC's members provide uniform benefits in all states where beneficiaries are located. Such nationwide benefit uniformity is important to employee morale and yields significant savings in administrative expenses.

Most of the welfare plans of ERIC's members are *insured plans*—that is, they provide benefits through the purchase of group insurance policies covering their beneficiaries. Under an insured plan, the employer pays a premium to the insurance company, and the insurance company generally assumes the risk as to the actual level of benefits that will be payable during the term of the policy.[1] Some ERIC members maintain *non-insured plans.* Under these plans, the cost of benefits is the direct responsibility of the employer, who is sometimes referred to as a "self-insurer." As a rule, "self-insurance" is an economically feasible alternative to purchasing insurance from an insurance company only where a plan is large enough to allow the risk to be spread over a large population. While self-insurance has been growing, insured welfare plans remain much more common. For example, among medium and large firms nationwide, insured health plans covered about four times as many individuals as self-insured plans in 1982. U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, EMPLOYEE BENEFITS IN MEDIUM AND LARGE FIRMS, 1982, at 36 (1983).

Whether state governments can dictate the benefits of insured welfare plans is a question of great importance to ERIC's members and their employees. The companies participating in ERIC spend hundreds of millions of dollars each year on insurance premiums and administrative expenses

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[1] Some insurance policies, particularly for large plans, are "experience rated," which means that the premium is based on the actual claims experience under the policy. Generally, under such policies, if the plan has a surplus in a particular year (premiums exceed claims and expenses), the plan receives a refund or credit of some portion of the premiums, while if the plan incurs a deficit (claims and expenses exceed premiums), the employer can choose between not renewing the policy, in which case the insurance company absorbs the deficit, or renewing the policy and paying some or all of the deficit over a period of time. Under experience-rated policies of this kind, risks are not borne entirely by the insurance company, but rather are shared between the insurance company and the employer.

for insured welfare plans.[2] Laws increasing the costs of insured welfare plans can have a substantial economic impact on a business. Welfare-plan benefits are a major issue in collective bargaining negotiations and are a major factor in compensation decisions for non-union employees.

If the states are permitted to enforce a crazy quilt of mandatory-benefit laws against insured welfare plans, both employers and employees will suffer. Companies with insured plans will be forced either to adopt all-encompassing benefit packages that satisfy the laws of every state, which will greatly increase total benefit costs, or to provide a variety of different benefits on a state-by-state basis, which will impose costly administrative burdens and cause dissatisfaction and confusion among employees. Free give-and-take in collective bargaining, as well as employers' ability to offer their non-union employees attractive pay and benefit packages at acceptable cost, will be supplanted by state prescription of a key element of compensation. Employees will be forced to accept benefits they would not have chosen themselves, and to sacrifice benefits they would have preferred. The only other alternative for such employers will be to abandon their insured plans completely and shoulder the risks and costs of "self-insurance"—risks and costs they decided *not* to incur when they established insured plans. In sum, both employers and employees will be prevented from achieving the best possible benefits at the most reasonable cost.

The result will be that fundamental purposes of ERISA—national uniformity in benefit-plan regulation and the growth and soundness of employee benefit plans—will be frustrated. These grave consequences, as well as the importance of the legal questions presented, call for this Court's review of the decision below.

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[2] Nationally, health insurance premiums totalled $85 billion in 1981, most of which was paid by employers. HEALTH INSURANCE ASSOCIATION OF AMERICA, SOURCE BOOK OF HEALTH INSURANCE DATA, 1982-1983, at 6 (1982). Some three-fourths of the full-time employees of private firms are covered by health plans. U.S. DEPARTMENT OF LABOR, LABOR-MANAGEMENT SERVICES ADMINISTRATION, GROUP HEALTH INSURANCE COVERAGE OF PRIVATE FULL-TIME WAGE AND SALARY WORKERS, 1979, at 15 (1981).

THIS CASE PRESENTS SUBSTANTIAL FEDERAL QUESTIONS

Section 47B of Chapter 175 of the Massachusetts General Laws requires that insurance policies that provide hospital and surgical benefits for state residents also must provide specified mental health benefits.[3] Section 47B also requires that these same benefits be provided by "any employees' health and welfare fund which provides hospital expense and surgical expense benefits" in the state. Thus, the statute's clear purpose is to mandate health benefits for *all employee benefit plans*, both insured and non-insured. This is confirmed by the only legislative material available. The explanatory report of the joint committee that originated the bill makes clear that the committee's objective was to furnish mental health benefits for "workers." MASS. GEN. COURT, JT. COMM. ON INSURANCE, ADVANCES IN HEALTH INSURANCE IN MASSACHUSETTS 1, 3, 4 (1974).

A. ERISA Pre-Emption

In this action, the appellants argued that Section 47B was pre-empted by both ERISA and the NLRA. The ERISA pre-emption issue received the primary attention of the court below.

ERISA pre-empts all state laws insofar as they "relate to any employee benefit plan." ERISA § 514(a), 29 U.S.C. § 1144(a). Exempted from this pre-emption, however, is any state law "which regulates insurance." ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A). This is often referred to as the "insurance savings clause." ERISA also provides that, in applying the insurance savings clause, an employee benefit plan shall not "be deemed to be an insurance company or other insurer . . . or to be engaged in the business of insurance . . . for purposes of any law of any State purporting to regulate insurance companies [or] insurance contracts." ERISA § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B). This is often referred to as the "deemer clause."

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[3] These include payment for sixty days' hospitalization in a mental hospital, benefits for hospitalization in a general hospital for mental or nervous conditions that are equal to the benefits provided for other illnesses, and $500 per year for certain out-patient mental health benefits.

The question confronting the Massachusetts Supreme Judicial Court below was whether Section 47B is a law "which regulates insurance" within the meaning of ERISA's insurance savings clause—and thus exempt from pre-emption—or is preempted by ERISA's basic pre-emption provision, particularly as read together with the expression of Congressional intent in the deemer clause to prevent state insurance laws from being used as a pretext for state regulation of employee benefit plans.

The court began its analysis of this question by artificially bifurcating Section 47B. The state had conceded that insofar as the statute applied explicitly to non-insured employee benefit plans, it was pre-empted by ERISA. The court concluded that this aspect of the statute was severable as a matter of general state-law severability doctrine, and thus proceeded to review Section 47B as if it had been solely a law directed at insurance policies. *Attorney General* v. *Travelers Insurance Co.*, 385 Mass. 598, 601, 433 N.E.2d 1223, 1225, App. 13a, 15a-16a (1982), *vacated & remanded,* 103 S. Ct. 3563, App. 10a (1983), *on remand,* 391 Mass. 730, 463 N.E.2d 548, App. 1a (1984).

The court next recognized that a literal reading of the insurance savings clause, exempting any state law bearing the label "insurance" from pre-emption, was untenable, as this would give states virtually unlimited rein to govern employee benefit plans under the pretext of insurance regulation. As the court put it, this construction "might permit the State, through its insurance laws, to reach far into areas governed by ERISA, and thereby negate the unmistakable intent of Congress to work a broad preemption." *Id.* at 606, 433 N.E.2d at 1228, App. at 21a.

The court was thus faced with the task of drawing a line between non-pre-empted state insurance laws and those state laws that, while purporting on their face to involve insurance, *are* pre-empted. The court decided that the appropriate basis for distinction was whether the state statute was in "clear conflict" with affirmative regulatory provisions of ERISA. *Id.* Since ERISA's affirmative regulation of welfare plans is limited to reporting, disclosure, fiduciary conduct, and plan adminis-

tration, and ERISA, in contrast to Section 47B, does not prescribe the "substantive content of plans," the court concluded that Section 47B was not pre-empted. The court rejected the idea that ERISA was also actuated by fundamental policies of encouraging private initiative in structuring healthy, growing, broad-based employee benefit plans and allowing plan sponsors to enjoy a climate conducive to nationwide plan uniformity without interference from conflicting state laws. Instead, the court thought it could discern in this Court's decision in *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), intimations that ERISA's pre-emption was aimed solely at state laws that "affected a subject covered by ERISA." 385 Mass. at 608, 433 N.E.2d at 1229, App. at 23a.

On appeal, 103 S. Ct. 3563, App. 10a (1983), this Court vacated and remanded for further consideration in light of *Shaw* v. *Delta Air Lines, Inc.*, 103 S. Ct. 2890 (1983). *Shaw*, which repeatedly stressed that the exceptions from pre-emption in ERISA are "narrow" (*id.* at 2902, 2903), undermined both the Massachusetts Supreme Judicial Court's conflict-based notion of ERISA pre-emption and the Massachusetts court's rejection of private initiative and uniformity as fundamental goals of ERISA.

Shaw held that ERISA pre-empted a New York antidiscrimination law and a New York law requiring that sick-leave benefits be paid to employees unable to work because of pregnancy. In so holding, the Court specifically noted that ERISA "does not mandate that employers provide any particular benefits, and does not itself proscribe discrimination in the provision of employee benefits"—thus clearly rejecting the notion of the Massachusetts court in this case that conflict is the necessary predicate for pre-emption. *Id.* at 2897.

Further, *Shaw* cited *Alessi* for the proposition that ERISA, in "establishing benefit plan regulation 'as exclusively a federal concern,' " was aimed at minimizing "the need for interstate employers to administer their plans differently in each State in

which they have employees." *Id.* at 2904 (quoting *Alessi,* 451 U.S. at 523). In words equally applicable here, *Shaw* pointed out that allowing "varied and perhaps conflicting" state laws to be enforced against employee benefit plans would undercut employers' freedom to administer efficient, uniform employee benefit plans and would leave employers with a series of unattractive options. Among these options would be setting up different plans in each state—with "the inefficiency of such a system presumably . . . paid for by lowering benefit levels"—and adopting uniform plans that met the requirements of all states—which would require the employer to "reduce wages or eliminate those benefits not required by any State" in order to "offset the additional expenses." *Id.* at 2904 n.25. These very same adverse consequences are the inevitable result of the Massachusetts court's decision in this case.

Despite the clear rejection in *Shaw* of the Massachusetts Supreme Judicial Court's earlier reasoning, the court refused on remand to alter its decision. *Shaw*'s repeated characterization of ERISA's pre-emption exceptions as "narrow" was dismissed as "dictum," and the Supreme Judicial Court instead insisted on its own view of the insurance savings clause as "broad." 391 Mass. at 733-35, 463 N.E.2d at 550-51, App. at 4a-6a. The court acknowledged that *Shaw* "rejected a conflict-based analysis" of ERISA's general pre-emption provision, but nonetheless reaffirmed its own conflict-based theory of ERISA's insurance savings clause. *Id.* at 734, 463 N.E.2d at 551, App. at 5a. Finally, the court, while conceding that it was required to "accept as authoritative" this Court's conclusion in *Shaw* that ERISA was intended to foster private initiative and uniformity in benefit plans, now treated these policies as irrelevant. *Id.* at 734, 463 N.E.2d at 551, App. at 6a. While the Massachusetts court's earlier decision had recognized that ERISA's insurance savings clause cannot be applied literally, and had sought to interpret it based on the court's views of the policies animating ERISA, now, faced with an authoritative Supreme Court decision rejecting its notions of Congress' intent, the court set aside intent and reaffirmed its prior decision on the basis of the "language" that it had previously recognized to be the beginning—not the end—of the analysis. *Id.* at 735, 463 N.E.2d at 551, App. at 6a.

The ERISA pre-emption issue presented in this case is a substantial federal question for the following reasons:

1. It is an important question of first impression. No prior decision of this Court interprets ERISA's insurance savings clause. The lower courts are divided on the matter,[4] as are the commentators.[5]

2. The treatment of the issue by the court below is unsatisfactory. In reaffirming its earlier decision, the Massachusetts Supreme Judicial Court evaded the many conflicts between that decision and this Court's holdings in *Shaw* and *Alessi*. Moreover, while the court recognized (at least in its first opinion) that the insurance savings clause could not be interpreted literally because this would turn it into a loophole that could consume ERISA's primary mandate of preemption—a conclusion that was clearly correct[6]—the "clear conflict" standard that the court

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[4] *Compare, e.g.,* Metropolitan Life Insurance Co. v. Whaland, 410 A.2d 635 (N.H. 1979) (state mandatory benefit law not pre-empted), *with, e.g.,* Michigan United Food & Commercial Workers Fund v. Baerwaldt, 572 F. Supp. 943 (E.D. Mich. 1983), *appeal docketed,* No. 83-1570 (6th Cir. Aug. 16, 1983) (state mandatory benefit law pre-empted).

[5] *Compare, e.g.,* Brummond, *Federal Preemption of State Insurance Laws Under ERISA,* 62 IOWA L. REV. 57, 115-21 (1976) (opposing pre-emption), *with, e.g.,* Hutchinson & Ifshin, *Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974,* 46 U. CHI. L. REV. 23, 68-69 (1978) (favoring pre-emption). *See also* Kilberg & Heron, *The Preemption of State Law Under ERISA,* 1979 DUKE L.J. 383, 402 (courts have "given little guidance in determining when a state law which is merely labeled as an 'insurance law' may be a guise to regulate employee benefit plans and when such a law is a legitimate exercise of the state's traditional authority in the area of insurance").

[6] The purpose of a statute, and not its literal words, must be followed where literalism would produce a result "plainly at variance with the policy of the legislation as a whole." United States v. American Trucking Ass'ns, Inc., 310 U.S. 534, 543 (1940) (quoting Ozawa v. United States, 260 U.S. 168, 194 (1922)). As the Massachusetts court recognized in its first decision, this would be the effect of a literal reading of ERISA's insurance savings clause. Such a construction would give states unlimited power to regulate insured employee benefit plans. ERISA specifically recognizes the particular importance of insured plans, in defining "employee welfare benefit plan" as a plan that provides benefits "through the purchase of insurance or otherwise." ERISA § 3(1), 29 U.S.C. § 1002(1).

advanced as an alternative is untenable. It allows basic policies behind ERISA—fostering uniformity in employee benefit plans and encouraging their growth and soundness through private initiative—to be defeated by statutes that are labelled "insurance regulation" but are actually aimed at governing employee benefit plans. As this Court said in *Alessi,* "ERISA's authors clearly meant to preclude the States from avoiding through form the substance of the pre-emption provision." 451 U.S. at 525.

This Court should assume jurisdiction of this case and adopt a construction of ERISA's insurance savings clause that preserves legitimate state insurance regulation without undermining Congress' overriding objective of freeing employee benefit plans from conflicting and intrusive state regulation. The proper conclusion is that Congress meant to leave traditional insurance regulation to the states—regulation, for example, of capitalization, the form of policies, fiduciary and investment standards, and sales practices—but *not* to leave the states free to adopt laws formally classified as insurance laws but with the primary effect of governing employee benefit plans. Construing the insurance savings clause in this way clearly requires pre-emption of the present statute—which was expressly aimed at employee benefit plans [7]—while leaving the states wide scope to enact insurance laws with secondary or incidental effects on employee benefit plans.

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[7] ERISA's pre-emption provisions are directed at state laws that regulate "the terms and conditions of employee benefit plans." ERISA § 514(c)(2), 29 U.S.C. § 114(c)(2). This was exactly the intent and result of Section 47B. The Massachusetts Supreme Judicial Court's bifurcation of the statute disregarded this fact, and failed to come to grips with the federal-law question of statutory interpretation—independent of any state-law severability issue—of whether, in light of its purpose and effect, Section 47B could be considered a law "which regulates insurance" within the meaning of ERISA's insurance savings clause.

3. The court below ignored or misconstrued materials that illuminate Congress' intent. One source of guidance is the deemer clause, which the Massachusetts court dealt with only in passing, asserting without explanation that it reinforced the court's conclusion. 385 Mass. at 606, 433 N.E.2d at 1228, App. at 21a (deemer clause described as "one indication of the breadth of the savings clause"). Rather than supporting the decision below, the deemer clause demonstrates a Congressional concern that the insurance savings clause not become a pretext for state action evading ERISA's establishment of "benefit plan regulation 'as exclusively a federal concern' " (*Shaw,* 103 S. Ct. at 2904 (quoting *Alessi,* 451 U.S. at 523)).

Another source of guidance is the legislative history of ERISA. That history makes clear that ERISA's pre-emption provisions were adopted in order to preclude "multiple," "conflicting," and "inconsistent" state laws regulating employee benefit plans—not just, as the court below thought, in areas affirmatively regulated by ERISA, but in *all* areas. *See* 120 CONG. REC. 29197, 29933, 29942 (1974) (remarks of Rep. Dent, Sen. Williams, and Sen. Javits) (quoted in *Shaw,* 103 S. Ct. at 2901 & n.20).[8]

B. NLRA Pre-Emption

Many insured welfare plans are collectively bargained. Section 47B undeniably intrudes on the freedom of labor and management to negotiate the terms of employment contracts. The impact is significant. Health benefits, for example, are a principal issue in labor negotiations. State-mandated benefits of one kind force workers to sacrifice other, preferred benefits of a different kind.

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[8] *See also* H.R. REP. NO. 1785, 94th Cong., 2d Sess. 47 (1977) (report of oversight hearings on ERISA pre-emption, declaring that "the Federal interest and the need for uniformity are so great that enforcement of state regulation should be precluded," and suggesting that this policy is threatened by unduly broad constructions of "our efforts to ensure minimum disruption to the regulatory efforts of the states in the fields of insurance, banking and securities"). The committee's reference to "*minimum*" disruption of state regulation is significant. It clearly implies that a literal reading of the insurance savings clause—which would permit *no* disruption of state insurance regulation—was not intended.

In *Local 24, International Brotherhood of Teamsters* v. *Oliver,* 358 U.S. 283 (1959), this Court held that the NLRA pre-empts state laws that prescribe terms of collectively-bargained labor agreements. Health benefits are a mandatory subject of bargaining. *Allied Chemical & Alkali Workers* v. *Pittsburgh Plate Glass Co.,* 404 U.S. 157, 159 (1971). Thus, *Oliver* would seem to be square authority that the NLRA pre-empts Section 47B as applied to collectively-bargained insured plans.

This conclusion is supported by the Court's decision in *Alessi, supra.* There, in holding that ERISA pre-empted state laws prohibiting workers' compensation benefits from being offset against pensions, the Court found its conclusion reinforced, insofar as collectively-bargained pension plans were concerned, by "the additional federal interest in precluding state interference with labor-management negotiations." 451 U.S. at 525 (citing *Oliver*). Pre-emption was compelled, the Court held, by the "direct clash between the state statute and the federal policy to keep calculation of pension benefits a subject of either labor-management negotiations or federal legislation." *Id.* at 526 n.22.

The Massachusetts Supreme Judicial Court nonetheless found that Section 47B was not pre-empted by the NLRA, on two grounds. First, the court found that there was a "public health" exception to NLRA pre-emption. The court reached this conclusion based on a remark in *Oliver* (358 U.S. at 297) that the state law pre-empted in that case was not a "local health or safety regulation." 385 Mass. at 613, 433 N.E.2d at 1232, App. at 29a-30a. Second, the court concluded that there is no NLRA pre-emption where some other federal statute expresses a Congressional intent to permit state regulation. The court found such an intent in Section 2(b) of the McCarran-Ferguson Act, 15 U.S.C. § 1012(b), which provides that federal statutes should not be construed as superseding state laws enacted "for the purpose of regulating the business of insurance." 385 Mass. at 613-14, 433 N.E.2d at 1232, App. at 30a.

This holding, like the lower court's ERISA pre-emption holding, presents a substantial question of federal law. This Court has had little occasion to apply the doctrine of *Oliver* that

state laws directly dictating the *substance* of labor-management agreements are pre-empted by the NLRA.[9] Rather, most of this Court's NLRA pre-emption decisions have focused on pre-emption of state laws affecting the *process* of labor-management relations. *See, e.g., San Diego Building Trades Council* v. *Garmon,* 359 U.S. 236 (1959); *Lodge 76, International Association of Machinists* v. *Wisconsin Employment Relations Commission,* 427 U.S. 132 (1976). The Court has never decided whether there is in fact a "public health" exception to the *Oliver* doctrine, much less defined its scope. Lower courts are divided on the issue. *See, e.g.,* Hutchinson & Ifshin, *supra* note 5, at 75.

Nor has this Court ever addressed whether the McCarran-Ferguson Act, which was enacted long before state legislatures first attempted to prescribe substantive terms of collective bargaining agreements through the vehicle of insurance laws, expresses a Congressional intent to permit such state legislation. The recent decision in *Malone* v. *White Motor Corp.,* 435 U.S. 497, 513 (1978) (plurality opinion), indicates that any such intent must be "evident" [10]—a test that the court below did not apply, and one it seems unlikely the McCarran-Ferguson Act could pass. Moreover, it is not clear that a statute enacted with the express purpose of regulating employee benefit plans subject to ERISA is properly regarded as a statute "regulating the business of insurance" within the meaning of the McCarran-Ferguson Act.[11] Finally, the Massachusetts court's summary dismissal in a footnote (385 Mass. at 614 n.25, 433 N.E.2d at 1232 n.25, App. at 30a n.25) of Section 4 of the McCarran-Ferguson Act, 15 U.S.C. § 1014—which provides that the

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[9] The continuing validity of the doctrine was recognized, however, in Malone v. White Motor Corp., 435 U.S. 497, 512-14 (1978) (plurality opinion), and, as noted above, in *Alessi.*

[10] *See also* New York Telephone Co. v. New York State Department of Labor, 440 U.S. 519, 540-45 (1979) (plurality opinion); *id.* at 546 n.* (Brennan, J., concurring); *id.* at 547, 551 (Blackmun, J., concurring).

[11] *Cf.* Group Life & Health Insurance Co. v. Royal Drug Co., 440 U.S. 205 (1979) (Blue Shield Pharmacy Agreements are not exempt from antitrust laws as "the business of insurance" under the McCarran-Ferguson Act, particularly in light of the principle that exemptions from the antitrust laws are to be narrowly construed).

McCarran-Ferguson Act shall not affect "application [of the NLRA] to the business of insurance"—does not reflect the sort of careful analysis called for by the important issue of labor-law pre-emption posed by these cases.

CONCLUSION

The Court should note probable jurisdiction in these cases.

Respectfully submitted,

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APPENDIX

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Allied Corporation

Aluminum Company of America

AMAX Inc.

American Telephone & Telegraph Company

Apache Corporation

ASARCO Incorporated

Atlantic Richfield Company

Bankers Trust Company

Bank of America N.T. & S.A.

Bell Communications Research

Bethlehem Steel Corporation

The Boeing Company

Bristol-Myers Company

Buck Consultants, Inc.

Caterpillar Tractor Co.

Champion International Corporation

The Chase Manhattan Bank, N.A.

Citibank, N.A.

The Coca-Cola Company

Columbia Gas System Service Corp.

Combustion Engineering, Inc.

Connecticut General Life Insurance Co.

Consolidated Foods Corporation

The Continental Group, Inc.

Coopers & Lybrand

Dart & Kraft Inc.

Deere & Company

Delta Air Lines Inc.

Digital Equipment Corp.

R. R. Donnelley & Sons Company

The Dow Chemical Company

Dresser Industries, Inc.

E. I. du Pont de Nemours & Company, Incorporated

Eastman Kodak Company

Eli Lilly and Company

Equitable Life Assurance Society of the United States

Esmark, Inc.

Exxon Corporation

Federated Department Stores, Inc.

FMC Corporation

Ford Motor Company

General Electric Company

General Mills, Inc.

General Motors Corporation

W. R. Grace & Co.

The Greyhound Corporation

Grumman Corporation

GTE Corporation

Gulf & Western Industries, Inc.

Frank B. Hall Consulting Company

John Hancock Mutual Life Insurance Co.

A. S. Hansen, Inc.

Hazlehurst & Associates, Inc.

H. J. Heinz Company

Hewitt Associates

Honeywell Inc.

ICI Americas, Inc.

Ingersoll-Rand Company

International Business Machines Corporation

International Harvester Company

International Telephone & Telegraph Corporation

Internorth, Inc.

Johnson & Johnson

Knight-Ridder Newspapers, Inc.

LTV Corp.

Manufacturers Hanover Trust Company

William M. Mercer, Inc.

Metropolitan Life Insurance Company

Minnesota Mining & Manufacturing Co.

Mobil Oil Corporation

Monsanto Company

Mutual of America

Occidental Petroleum Services, Inc.

Olin Corporation

Owens-Corning Fiberglas Corporation

Owens-Illinois, Inc.

J. C. Penney Company, Inc.

Pennzoil Company

PPG Industries, Inc.

Procter & Gamble Company

The Prudential Insurance Company of America

Ralston Purina Company

RCA Corporation

Republic Steel Corporation

R. J. Reynolds Industries, Inc.

Rockwell International Corporation

Sears, Roebuck and Co.

Shell Oil Company

The Southland Corporation

Sperry Corporation

Standard Oil Company of California

Standard Oil Company of Indiana

Standard Oil Company of Ohio

Sun Company, Inc.

Tampa Electric Company

Tenneco Inc.

Texaco Inc.

Textron Inc.

Time Incorporated

Towers, Perrin, Forster & Crosby Inc.

The Travelers Insurance Company

TRW Inc.

Union Camp Corporation

Union Carbide Corporation

United States Steel Corporation

United States Tobacco Company

United Technologies Corporation

Unocal Corporation

Westinghouse Electric Corporation

The Wyatt Company

Xerox Corporation

CERTIFICATE OF SERVICE

I certify that on this 7th day of September 1984 I served the foregoing brief on each of the parties by sending three copies thereof by first-class mail, postage prepaid, to:

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